

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
BRIEF**

74-1578

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P/S

UNITED STATES SECOND CIRCUIT COURT
OF APPEALS

73 CRIMINAL 1046

UNITED STATES OF AMERICA

VS.

PETER PHILIP MAUHLIN

APPELLANT'S BRIEF

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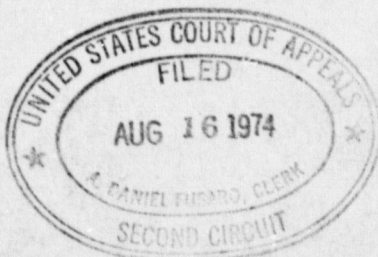


TABLE OF CASES

	<u>Page</u>
1. MIRANDA V. ARIZONA, 384 U.S.444 (1967)	5
2. ESCOBEDO V. ILLINOIS, 378 U.S. 478 (1964)	5
3. U.S.V. WADE, 388 U.S. 218 (1967)	8
4. STOVALL V. DENNO, 388 U.S. 293 (1967)	8
5. U.S.V. ZELLER	8
6. GILBERT V. CALIFORNIA, 388 U.S. 263 (1967)	8
7. SIMMONS V. U.S., 390 U.S. 377 (1968)m	8.

TABLE OF CONTENTS

I. STATEMENTS OF FACTS	1
II. POINT ONE: MIRANDA PROBLEM	3.
III. POINT TWO: WADE-STOVALL-GILBERT PROBLEM	8.
IV. CONCLUSION	9.

STATEMENT OF FACTS

The defendant, Peter Philip Mauchlin, was tried before a jury, Hon. Henry R. Tyler, D.J. presiding, on February 6, 7, 11, 13 and 14, 1974, on multiple charges of bank robbery.

He was convicted on all counts by the jury on February 14, 1974.

The defendant did not take the stand in his own defense and called no witnesses in his behalf.

The defendant had been previously serving a 15 year sentence on bank robbery imposed by the Hon. Lawrence A. Whipple, U.S.D.J., District of New Jersey.

The Government presented numerous witnesses as can be seen by a reference to the transcript in this case, both eye witnesses to the various bank robberies and witnesses of and to a demonstrative nature who testified as to items seized in a search of Mr. Mauchlin's apartment, including bait money, various weapons, pipes which were similar to certain pipe bombs which were exploded at the Central Savings Bank, which were the objects of the crime charge in Count II.

The defendant was sentenced on April 20, 1974, and received the following sentence:

As to Counts 1 through 5 inclusive - 10 years in jail on each count to run concurrently;

As to Count 6 through 9 inclusive - 12 years in jail to run concurrently to the term imposed on Counts 1 to 5 aforementioned;

As to Count 10 - 25 years in jail to run concurrently to the terms imposed on Counts 1 to 5 and 6 to 9 inclusive aforementioned.

As to Count 11 - 5 years in jail to run consecutively to Counts 1 to 5; 6 to 9, and 10 as aforementioned.

The sentences are to run consecutively to a 15 year present term which the defendant is presently serving as stated above.

It should also be brought to the attention of the court that the Hon. Frederick Lacey, U.S.D.J. of New Jersey imposed a 25 year previous sentence on this defendant within the past 4 months as result of another bank robbery conviction in the District of New Jersey.

The defendant is presently incarcerated in a Federal Institution.

POINT I

ANY STATEMENTS MADE BY THIS DEFENDANT AT THE TIME OF HIS ARREST FOR THESE CRIMES CHARGED IN THIS INDICTMENT SHOULD HAVE BEEN SUPPRESSED IN AS MUCH AS MR. MAUHLIN WAS PHYSICALLY ILL AT THE TIME OF HIS ARREST IN NOVEMBER OF 1973 AND ALSO THAT THE AUTHORITIES THREATENED TO HAVE HIS MOTHER AND SISTER ARRESTED IF HE DID NOT CONFESS TO CERTAIN BANK ROBBERIES AND TO THE BOMBING OF THE CENTRAL SAVINGS BANK, AND ALSO DID NOT ALLOW HIM TO CONTACT THE ATTORNEY UNDERSIGNED WHO HE ATTEMPTED TO CONTACT AND REACH FROM THE DISTRICT ATTORNEY'S OFFICE THE DAY FOLLOWING THE ARREST IN NOVEMBER, 1973.

A reading of the testimony of Agent Quinn and testimony of Mr. Mauchlin in the voidire (Tr. pages 15 to 86) call attention to the fact that at the time the defendant was arrested at 200 E. 36th Street, City of New York, he was under the influence of a narcotic drug. (See Tr. p. 76, lines 16 to 18). Also this defendant had not eaten any food the entire day and was interrogated on the evening of the arrest from approximately 8 P.M. to 11 P.M., at F.B.I. headquarters in New York (See Tr. p. 75, lines 14 to 21). This coupled with the fact that when Mr. Mauchlin on the following day was brought to Mr. Putzel's office for further interview (See. Tr. p. 70, lines 1 to 25), he stated that he wanted the undersigned attorney to represent him and even though an attempt was made to reach the

undersigned attorney who was not available in his office on that day, the interrogation continued in which Mr. Mauchlin made numerous damaging admissions which were later used in the government's case in chief to prove the truth of the allegations contained in the indictment as can be seen by a reading of the testimony before the jury of Sepcial Agent Quinn.

Also on November 7, 1973, Mr. Mauchlin never signed any waiver to have an attorney represent him (See Tr. p. 67, lines 21 to 25) nor did he do so on November 8th, when he was brought before the Magistrate for an arraignment or brought back to the office of Mr. Putzel, District Attorney.

As a matter of further information it seems that on November 8th Mr. Putzel entered into a written agreement of some sort with Mr. Mauchlin which was actually signed by Mr. Mauchlin which document was introduced into evidence, the gist of which was that Mr. Mauchlin would give a confession concerning the bank bombing of the Central State Savings Bank, the charge contained in Count 11 in the indictment, the consideration for which would be the government's promise not to arrest the defendant's moth and sister on a charge of harboring a fugitive upon further involvement in Mr. Mauchlin's alleged crimes.

Lastly Mr. Mauchlin states in his testimony at the voidire outside the presence of the jury that certain epithets were used against his moth and sister (see Tr. p. 86, lines 19 to 21) "I recall them saying that they were going to put my

mother and sister out on Riker's Island with the lesbians" and "that meant the fuckfaced sister, the whore too."

Of course the government denied that in any way that they vilified Mr. Mauchlin's relatives or in any way used any coercion with him. The legal test that the government was faced with after Mr. Mauchlin's arrest on November 7, 1973, and placed into custody was whether the dictates of the Miranda and Escobedo line of cases was to be strictly adhered to by:

1. Advising the defendant of all his constitutional rights;
2. Advising him that he had the right to contact an attorney.

The evidence adduced at the voidire herein shows conclusively both from the lips of Agent Quinn, from the testimony of Mr. Mauchlin, that the latter did in fact request an attorney, to wit: the undersigned on this document, who parenthetically was appointed to represent Mr. Mauchlin at the trial and did so and made this request on 7 and 8 November. Not only was there no attorney present to represent Mr. Mauchlin at this critical phase of the case and there are no documents showing any waiver of Mr. Mauchlin of his rights to an attorney, yet numerous admissions were obtained from Mr. Mauchlin's lips during a period of interrogation which lasted from November 7th to November 8th, 1973. When you combine that fact with Mr. Mauchlin's physical condition on November 7th and with the overbearing techniques of interrogation used by the government

concerning the defendant's mother and sister, the only conclusion that could be drawn is that the psychological pressure placed upon this defendant destroyed whatever free choice he might have had in uttering these incriminating statements which by and by were all read into evidence by various agents in the government's case in chief.

In conclusion therefore the Court of Appeals is respectfully asked to hold that any incriminating statements made by Mr. Mauchlin under these circumstances were the fruit of a poisoned tree so to speak in that they were not voluntary knowingly and with a free will given by this defendant, but in fact helped to convict him if not having convicted him by themselves, they being so prejudicial.

It must be remembered that the government's case outside of these very damaging statements by the defendant was based upon certain eye witness observations of a particular man committing these bank robberies. The only crime alleged where there was no eye witness testimony was in Count 11, the bombing of the Central Savings Bank.

This eye witness testimony was in certain instances rather strong, in certain instances rather otherwise as can be seen by a perusal of the transcript. Nevertheless with the defendant's general denial of committing these crimes, the eye witness testimony should have been scrutinized by the jury more carefully, it is respectfully submitted, if they the jury were not also faced with these incriminating statements aforementioned.

Finally the only other evidence adduced were certain items seized from Mr. Mauchlin's apartment, namely, various sums of money, certain hand guns, a servo-unit including transmitter and receiver, and two round cylindrical pipes. The Government then entered into the flare of a Buck Rodgers cartoon series, hypothesized that Mr. Mauchlin blew up the Central Savings Bank by the use of an electrical impulse directed by him to the bomb located in an attache case located outside of the bank. To that end they brought into the court another servo unit and staged a demonstration exploding a small light bulb.

As said earlier there were no eye witnesses produced that Mr. Mauchlin was in this bank.

When all these notes are taken into consideration it can be seen that the statements aforementioned were extremely harmful to Mr. Mauchlin and helped to convict him.

POINT TWO

Certain photographs shown to the witness Miss Emmermann were in violation of the line of cases known as Wade, Stovall and Zeitler, in that only photograph, mug shot in variety of Mr. Mauchlin, was shown to Miss Emmermann and to other so-called eye witness, parenthetically all eye witnesses where all bank tellers and bank employees without the restrictions imposed by the above cited cases as to photographic line up.

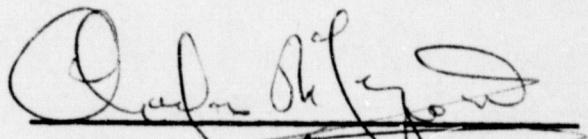
The court is referred to page 326 to 328 of the testimony of Miss Emmerman in which it was conclusively shown that she was not given a variety of faces to identify but solely two photographs of the defendant Mauchlin in direct violation of Wade, Stovall and Zeitler.

The same situation occurred with Miss Hagan, another government witness, and the court is referred to Tr. page 302 and 303, lines 15, to the following page 25.

This technique for the showing of photographs falls within the impermissibly suggestive rule of the above line of cases as brought to full fruition in the case of SIMMONS V. U.S. The use of this technique also casts grave doubt upon any in court identification because of the suggestion inherent in the use of an unfair photographic line-up.

CONCLUSION

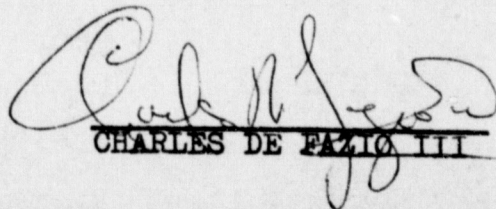
It is respectfully requested that the court reverse the conviction of Mr. Mauchlin in this case based upon the use of these extra judicial statements of Mr. Mauchlin at the time of trial which proved to be most damaging and because of the use of certain photographs to the bank tellers in violation of the structures of the photographic identification line-up rules and remand the matter for a new trial in order that Mr. Mauchlin can receive a trial without the use of these statements which were so damaging to his case in the trial under discussion.



CHARLES DE FAZIO III
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CERTIFICATION

I certify that a copy of this brief was mailed to Asst. U.S. Attorney, Peter Putzel, Esq., personally, by me, on July 5, 1974.



CHARLES DE FAZIO III